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**An Analysis and Evaluation of  
Certificate of Need Regulation in Maryland**

**Home Health Services**

*Response to Written Comments on the  
Staff Recommendation*

**MARYLAND HEALTH CARE COMMISSION**

*December 12, 2000*

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# **An Analysis and Evaluation of Certificate of Need Regulation in Maryland: Home Health Services**

## ***Response to Written Comments on the Staff Recommendation***

### **I. Introduction**

The Maryland Health Care Commission's working paper, titled *An Analysis and Evaluation of Certificate of Need Regulation in Maryland: Home Health Services*, was developed as one in a series of working papers examining major policy issues of the Certificate of Need (CON) process, as required by House Bill 995 (1999). The paper presented the following nine alternative regulatory strategies to the current Certificate of Need Requirement to establish home health service:

- Option 1: Maintain Existing Certificate of Need Program Regulation
- Option 2: Expanded CON Program Regulation (Require CON or Exemption from CON to Close an Existing Program)
- Option 3: Expanded CON Program Regulation (Require RSAs to obtain CON Approval)
- Option 4: Retain CON Review, but Project Need and Consider Applications on a Regional, not Jurisdictional Basis
- Option 5: Partial Deregulation - Regulate Only Sole/Two Provider Jurisdictions
- Option 6: Deregulation from CON, with Creation of a Data Collection and Reporting Model to Assure Quality (Consumer Report Card, or Provider Feedback Reports)
- Option 7: Deregulation from CON, with expansion of the Ombudsman Role to include Community-Based Services
- Option 8: Deregulation from CON, with Expanded Licensure Standards and Oversight
- Option 9: Deregulation from Certificate of Need Review, with or without Moratorium on New Agencies or Expansion of Service Area

The Commission released the Working Paper on September 15, 2000, and invited interested organizations and individuals to submit written comments by October 16, 2000. The Commission received comments from 11 organizations. The Commission's staff evaluated the public comments that were received on the Working Paper and determined that six supported option 1, two supported Option 8, and two supported Option 9.

On November 21, 2000, staff recommended that the Commission adopt a modified version of Option 8, recommending the deregulation of home health agency services from CON oversight, contingent upon the enactment of statutory authority for the Department's Office of Health Care Quality to reorganize and expand the scope of state licensure standards

for all entities providing home health care. Staff further recommended that the effective date of the deregulation from CON be delayed until 18 months following the effective date of any regulation required to implement the statutory changes needed to modify state licensure standards. The Commission invited interested organizations and individuals to submit written comments on *An Analysis and Evaluation of Certificate of Need Regulation in Maryland: Working Paper: Home Health Services - Summary and Analysis of Public Comments and Staff Recommendation* until December 5, 2000. The Commission received comments from the following:

1. Elizabeth Cooney Personnel Agency, Inc.
2. Maryland-National Capital Homecare Association
3. MedStar Health

## **II. Summary of Public Comments on the Staff Recommendation**

Written comments on the recommendation in an *Analysis and Evaluation of Certificate of Need Regulation in Maryland: Working Paper: Home Health Services - Summary and Analysis of Public Comments and Staff Recommendation* are summarized below<sup>1</sup>:

Elizabeth Weglein of the **Elizabeth Cooney Personnel Agency** had a few corrections to make. First, in the table on p. 10 of the text of the document that provided a *Summary and Analysis of Public Comments and Staff Recommendation (Dated November 21, 2000)*, Elizabeth Cooney is listed solely as a Nurse Staffing Agency. Ms. Weglein points out that her agency is also a Nurse Referral Agency or Nurse Registry that was established in 1957. She also expressed concerns with the portion of Option 8 that refers to using the current CON review standards, since “the standards are not part of the current regulatory environment for Nurse Referral Agencies. Nurse Referral Agencies are not in a position to provide charity care, Medicaid, data collection and linkages to other community health providers on self-employed individuals.” Ms. Weglein does not oppose the Commission’s recommendation and states that “in the event of a Community-Based Health Agencies licensure bill presented to the legislature, we will work with the Office of Health Care Quality and the State Legislature to create a balanced and viable licensure to help our citizens and the business sector in Maryland.”

Seth Johnson of the **Maryland-National Capital Homecare Association (MHCHA)** also offered some corrections to the Commission’s summary of its previous comments. First, in comments on Option 3 and Option 8, the Association mentioned support for a community based health care option. In this letter, Mr. Johnson said that “the Association would like to clarify that while we support this type of option, MNCHA did not support the version of legislation (SB 359) introduced in 1999 to create a Community-Based Health Agencies Licensure.”

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<sup>1</sup> Copies of the full text of the public comments are provided in Appendix A of this document.

MNCHA also offered comments on the recommendation to delay the elimination of the CON until 18 months after the effective date of the regulations. “While the association is pleased the Commission recognizes the current state of the home care industry in Maryland due to federal changes in the Balanced Budget Act of 1997 this could delay implementation by almost four years.”

Finally, with respect to Option 6, MNCHA “firmly believes that the current reporting requirements from the federal government and the state of Maryland should be used rather than adding additional reporting requirement.”

Clarence Brewton, Jr. of **MedStar Health** opposed the staff recommendation of a modified Option 8. He states that it is unclear whether a mechanism will be in place to ensure reasonable access to quality services. He favors keeping CON (Option 1) since “the CON process assures compliance with all state, federal, and other legal requirements with respect to payment for service, uncompensated care, community service, and geographic and financial access to care.” MedStar recommends Option 1 in order to keep CON in place while monitoring the effects of federal changes, and only after an evaluation of the federal impact consider changes at the local level.

### **III. Staff Response and Analysis**

The Elizabeth Cooney Agency, in addition to stating its role as both a Nurse Staffing Agency and a Nurse Registry, had concerns with Option 8, particularly with respect to the imposition of CON standards on all homecare providers, but offered to work with the legislature in developing legislation. MNCHA, in addition to correction on its position on SB 359 of 1999, opposed additional reporting under Option 6 (though it supports the current level of reporting) and questions the delays in implementation of Option 8. Finally, MedStar opposed Option 8 and supported Option 1. However, MedStar did feel that the issue could be reconsidered after the full impact of the federal changes on the home health industry could be assessed.

### **IV. Staff Recommended Action**

Analysis of the public comments received on the *Working Paper: Home Health Services* and follow-up staff recommendation indicate no clear consensus on the future role of the CON program in oversight of market entry for home health agencies. While implementation of the new Medicare prospective payment system for home health agencies appears on the one hand to have moderated incentives contributing to growth in the supply of agencies, on the other hand, it could be argued that the full impact of this new payment system remains to be evaluated. Another uncertainty discussed by Commissioners at the November meeting concerns both the final scope and timetable for reorganizing the licensure structure for home-based health agencies. A bill designed to create a Community-Based Health Agency licensure category did not pass during the 1999 session of the General Assembly. Given these

considerations, staff recommends that the Commission adopt the following revised recommendation:

1. The Commission should maintain the existing Certificate of Need review requirement for new or expanded home health agencies.
2. The Commission should support efforts to reorganize the current statutory framework for licensure of home-based health care services to provide consistent and improved oversight for both home health agencies and residential service agencies.
3. The Commission should monitor the effectiveness of Certificate of Need oversight for home health agencies in light of the changing environment and periodically assess whether CON regulation is still needed.

While staff continues to believe that the future of government oversight of home health services should focus on on-going outcome assessment and quality improvement, we recognize that it is critical to have the appropriate infrastructure in place to enable this change in policy direction. The revised recommendation states the commitment of the Commission to support efforts to develop the necessary infrastructure. This recommendation also provides an opportunity for the Commission to evaluate the impact of changes in the Medicare PPS on access, quality, and cost of home health care prior to considering a change in the regulation of market entry.

**Appendix A**

**Written Public Comments Received on the  
Staff Recommendation**